



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM22-15-000; Order No. 883]

Certification of Uncontested Settlements by Settlement Judges

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its delegation of authority regulations to authorize the Chief Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as a settlement judge for a proceeding to certify to the Commission uncontested offers of settlement.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Lawrence R. Greenfield, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6415, lawrence.greenfield@ferc.gov.

SUPPLEMENTARY INFORMATION:

1. In this instant final rule, the Commission codifies its precedent, revising its delegation of authority regulations to authorize the Chief Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as a settlement judge (collectively, “settlement judge”) for a proceeding to certify to the Commission uncontested offers of settlement.

I. Discussion

2. The Commission has long recognized the importance of settlements among the participants to litigated proceedings as a tool to efficiently and expeditiously resolve those contested proceedings set for trial-type evidentiary hearing, as well as other contested proceedings.¹ Settlement judges are particularly crucial to helping participants resolve such proceedings. The Commission’s Rules of Practice and Procedure have thus long provided for the appointment of settlement judges by the Chief Administrative Law Judge.² While the settlement judge is authorized to convene and preside over conferences and negotiations by the participants to a proceeding, and then to assess the practicalities of potential settlement, and then to report to the Chief Administrative Law Judge or the Commission, as appropriate, recommending continuation or termination of

¹ *E.g., Ariz. Pub. Serv. Co.*, 97 FERC ¶ 61,315, at 62,449 (2001) (“it has been Commission policy to promote voluntary settlements as an important tool in the administration of our jurisdictional responsibilities”); *Tex. Gas Transmission Corp.*, 28 FERC ¶ 61,372, at 61,665-66 (1984) (encouraging settlements, as they can play an important part in resolving issues without prolonged and contentious litigation); *cf. Tex. E. Transmission Corp. v. FPC*, 306 F.2d 345, 347-48 (5th Cir. 1962) (“For Commission approved voluntary settlements are an important and desirable mechanism as the Commission undertakes the staggering burden of dealing with the ceaseless flow of the ever-more complicated problems. . . . Consequently settlements should be encouraged, not discouraged.” (footnotes omitted)).

² 18 CFR 385.603 (2021).

settlement negotiations, the Commission's regulations do not expressly authorize the settlement judge to certify uncontested settlements to the Commission.³

3. Recognizing that the Commission's regulations did not expressly authorize settlement judges to certify uncontested settlements to the Commission, in 2002 the Commission sought to clarify this matter (and others not relevant here).⁴ The Commission noted that, in fact, at that time settlement judges were already typically certifying uncontested settlements, and the Commission went on to conclude that settlement judges' doing so was "appropriate and not inconsistent with [the] regulations."⁵ That is, the Commission expressly authorized settlement judges henceforth to do what they had been doing previously without express authorization, i.e., certify uncontested settlements. The Commission had not changed its delegation of authority regulations, however. We now do so, and we in this document codify in our delegation of authority regulations express authorization for settlement judges to certify uncontested settlements.

³ Compare 18 CFR 385.603 with 18 CFR 385.602 (2021). The Rules of Practice and Procedure authorize "presiding officers" to certify uncontested settlements, *see* 18 CFR 385.602(g)(1), and presiding officers are defined to include the Commissioner or administrative law judge designated to preside at the hearing, the Chief Administrative Law Judge, or with respect to proceedings not set for trial-type hearing the Commission employee designated to conduct such proceeding. 18 CFR 385.102(e) (2021). Settlement judges are not mentioned. The Commission's delegation of authority regulations similarly do not expressly authorize settlement judges to certify uncontested settlements. 18 CFR 375.304 (2021).

⁴ *Cities of Anaheim v. Cal. Indep. Sys. Operator Corp.*, 101 FERC ¶ 61,392 (2002).

⁵ *Id.* P 12 & n.8.

II. Information Collection Statement

4. The Office of Management Budget's regulations require approval of certain information collection requirements imposed by agency rules.⁶ This final rule, however, results in no new, additional, or different reporting burdens. This final rule does not require public utilities or natural gas companies, or indeed any participant in a Commission proceeding, to file new, additional, or different information, and it does not change the frequency with which they must file information.

III. Environmental Analysis

5. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁷ Issuance of this final rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.⁸ This final rule, codifying the ability of settlement judges to certify uncontested settlements, is clarifying and procedural and thus is exempt under that provision.

⁶ 5 CFR 1320.13 (2021).

⁷ *Reguls. Implementing the Nat'l Env't'l Pol'y Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

⁸ 18 CFR 380.4(a)(2)(ii) (2021).

IV. Regulatory Flexibility Act

6. The Regulatory Flexibility Act of 1980 (RFA)⁹ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule changes the Commission's delegations of authority to authorize settlement judges to certify uncontested settlements and does not create any additional requirements for participants. Indeed, by expressly delegating such authority, the Commission provides clarity concerning settlement judges' authority to certify participants' uncontested settlements, and that will benefit the participants in Commission proceedings. The Commission thus certifies that this final rule will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is therefore not required.

V. Document Availability

7. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

8. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this

⁹ 5 U.S.C. 601-12.

document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

9. User assistance is available for eLibrary and the Commission’s website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VI. Effective Date and Congressional Notification

10. These regulations are effective **[insert date 30 days from publication in Federal Register]**. The Commission is issuing this rule as a final rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice and comment procedures are unnecessary for “rules of agency organization, procedure, or practice.” This rule is such a rule, and, by codifying in the regulations the delegation of authority to settlement judges to certify uncontested settlements to the Commission, this rule is directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights, interests, or obligations of any affected participants. Notice and comment procedures are thus not required.

11. The Congressional Review Act provides for Congressional notification of certain rules, but essentially exempts “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.”¹⁰ This rule is such a rule, and, by codifying in the regulations the delegation of authority to settlement judges to certify uncontested settlements to the Commission, this rule is

¹⁰ 5 U.S.C. 804(3)(C).

directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights, interests, or obligations of any affected participants. Congressional notification is thus not required.

List of Subjects in 18 CFR Part 375

Authority delegations.

By the Commission.

Issued: May 19, 2022

Debbie-Anne A. Reese,
Deputy Secretary.

In consideration of the foregoing, the Commission amends part 375, chapter I, title 18, *Code of Federal Regulations*, as follows:

PART 375 – THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

2. In § 375.304, paragraph (c) is added to read as follows:

§ 375.304 Delegations to the Chief Administrative Law Judge.

* * * * *

(c) The Commission authorizes the Chief Administrative Law Judge, and the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as a settlement judge for a proceeding, to certify to the Commission uncontested offers of settlement.